

Teledesic is entitled to no greater procedural rights in requesting relief than other parties, such as DIRECTV, who will be affected by the “daisy chain” effects that Commission adjustments at 18 GHz will have. Given DIRECTV’s own interest in rapidly constructing and launching its expansion BSS system using the 24 GHz band, DIRECTV certainly would support expedited resolution of a rulemaking proceeding in which NGSO/FSS interference concerns with DEMS at 18 GHz are addressed, as well as DIRECTV’s own petition to allocate the 24 GHz band for BSS uplinks. No commercial party, however, should receive special insulation from the proper functioning of the administrative process.⁷⁴

V. CONCLUSION

The Commission’s decision to waive the requisite notice and comment procedures in promulgating the rule and policy changes in the DEMS Order cannot be upheld. DIRECTV therefore respectfully requests that the Commission reconsider the actions taken in the DEMS Order, initiate a rulemaking proceeding, and modify all DEMS licenses appropriately in accordance with the results of that proceeding. The rulemaking proceeding should consider and answer questions that include the following:

(1) Can Teledesic’s commercial NGSO/FSS satellite operations, the Government and DEMS licensees in fact be accommodated at 18 GHz, with no need for DEMS to be relocated to other bands?

(2) If certain DEMS licensees serving the Washington, D.C., and Denver, Colorado areas must be relocated due to interference with Government satellite operations, to what band should these licensees be relocated?

(3) What, if any, are the costs and benefits of relocating all DEMS licensees from the 18 GHz band (as the Commission has done) and the policy reasons for taking such action? To the extent that concerns center on coordination with NGSO/FSS satellite operations, what

⁷⁴ See *Independent Guard Ass’n*, 57 F.3d at 770 (costs to agency of conducting notice and comment rulemaking are “minimal in nature”).

measures can be taken to facilitate the co-existence of NGSO/FSS systems and DEMS licensees without relocating DEMS licensees?

(4) If it is determined that the wholesale relocation of DEMS is necessary or desirable from a spectrum management or other public policy perspective, to what bands should DEMS be relocated?

(5) To the extent that 24 GHz is selected as candidate spectrum for DEMS use, what other uses are proposed for those bands, what effect would DEMS operations have on those proposed uses, and how can the interests of all parties be accommodated in the 24 GHz band? Given that the Commission already has proposed to significantly increase the amount of spectrum DEMS licensees may use at 24 GHz relative to their current allocation at 18 GHz, what would be the comparative benefits and burdens of providing DEMS operations access to only the amount of spectrum they currently enjoy, when counterbalanced against other services proposed for the 24 GHz band?

These are the types of questions that could and should have been answered prior to adoption of the DEMS Order, had there been an opportunity presented for notice and comment. DIRECTV urges that they now be addressed.⁷⁵ In addition, while this proceeding remains pending, and the DEMS Order remains non-final, DEMS licensees are on clear notice that any actions taken to transition their operations to 24 GHz are taken *at their own risk*, and are subject to the ultimate outcome of this and any related proceedings.⁷⁶

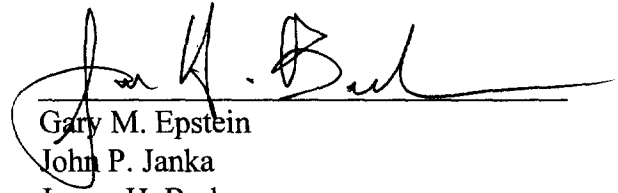
⁷⁵ DIRECTV also notes that, without any discussion in the text of the DEMS Order, and also without notice and comment, the Commission has modified the Table of Frequency Allocations contained in Section 2.106 of its rules by adding a primary allocation to the non-Government radionavigation service at 21.75 - 25.25 GHz. It is unclear whether this is a typographical error or whether there is some service contemplated that could have a preclusive effect on the use of this band by the fixed-satellite service for BSS feeder links. If the latter is the case, then this action too should be reconsidered and addressed in the requested rulemaking proceeding.

⁷⁶ For example, the Commission has put Teledesic on notice that its license is subject to any rules that may be adopted with respect to DEMS at 18 GHz. Teledesic Order at ¶ 38.

June 5, 1997

Respectfully submitted,

DIRECTV Enterprises, Inc.

A handwritten signature in black ink, appearing to read "Gary M. Epstein", is written over a horizontal line.

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DECLARATION OF PAUL R. ANDERSON

I, Paul R. Anderson, hereby declare as follows:

1. I am Director, Communications Systems for DIRECTV Enterprises, Inc. ("DIRECTV"). I am an engineer by training and familiar with the technical and interference characteristics of DIRECTV's DBS System, the requirements of Part 25 and Part 100 of the commission's rules, and the interference and technical issues referenced in the foregoing Petition for Reconsideration.

2. I have reviewed the foregoing Petition for Reconsideration from a technical perspective, and the information contained therein is true and accurate to the best of my knowledge, information and belief.

By: 
Paul R. Anderson
Director, Communications Systems
DIRECTV Enterprises, Inc.

June 4, 1997